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BEFORE THE  
Federal Communications Commission

WASHINGTON, D.C.

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In re Applications of  
SCRIPPS HOWARD BROADCASTING  
COMPANY

For Renewal of License of  
Station WMAR-TV,  
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for  
Television Facility on  
Channel 2 at  
Baltimore, Maryland

) MM Docket No. 93-94

) File No. BRCT-910603KY

SEP - 6 1994

) File No. BPCT-910903KE

To: The Honorable Richard L. Sippel  
Administrative Law Judge

**REPLY TO OPPOSITION TO FOUR JACKS  
BROADCASTING, INC.'S PETITION TO ENLARGE THE ISSUES**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys, hereby replies to the Opposition to Four Jacks Broadcasting, Inc.'s Petition to Enlarge the Issues (the "Petition") filed by Scripps Howard Broadcasting Company ("Scripps Howard"). As set forth herein, Scripps Howard has not offered the Presiding Judge any substantive argument against adding the issue requested by Four Jacks.

**BACKGROUND**

1. Scripps Howard's qualifications to remain a Commission licensee are presently under investigation to determine whether Scripps Howard misrepresented facts and/or lacked candor

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regarding critical evidence relating to its claimed renewal expectancy in this proceeding. In addition to these misrepresentation/lack of candor issues, Four Jacks requested in its Petition that the Presiding Judge add an issue concerning recently adjudicated anticompetitive misconduct by a company ultimately controlled by Scripps Howard, Sacramento Cable Television ("SCT") in the case captioned Coleman v. Sacramento Cable Television. SCT was found in violation of California law regarding locality discrimination and unfair competition as well as violations of county and city codes with respect to its pricing of cable television services.<sup>1/</sup> In 1987, that same company was found to have obtained its cable franchise through a "sham" process involving payoffs to local officials in exchange for SCT's monopoly cable franchise.<sup>2/</sup> Upon receiving notice that Coleman had become a "final adjudication" for Commission purposes, Four Jacks filed its Petition.

**FOUR JACKS' PETITION IS PROCEDURALLY SOUND**

2. Scripps Howard concedes that Four Jacks, pursuant to Section 1.229(a) of the Commission's rules, may file a petition

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<sup>1/</sup> Judgment Order entered June 30, 1994 by the Honorable Roger K. Warren of the Superior Court of California, County of Sacramento. A copy of the Order is attached to Scripps Howard's Notice Pertaining to Earlier Filed Amendment to Application (filed July 27, 1994).

<sup>2/</sup> Pacific West Cable Co. v. City of Sacramento, 672 F. Supp. 1322 (E.D. Cal. 1987). A description of this proceeding can be found in Four Jacks' earlier filings, including Four Jacks' Request to Certify Application for Review (filed April 8, 1993); Four Jacks' Petition to Enlarge Issues Against Scripps Howard Broadcasting Company (filed May 13, 1993); Four Jacks' Comments on "Motion for Acceptance of Amendment" (filed May 20, 1994).

to enlarge issues up to fifteen days after the facts which form the basis of the petition are discovered. Scripps Howard erroneously contends that, because findings of the law violations underlying the most recent finding of civil liability against SCT had occurred prior to the final adjudication, Four Jacks' petition is untimely. Scripps Howard neglects to consider that Four Jacks' petition, and the Commission's policy, are based on final adjudications against licensees. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179 (1986), recon. granted in part, denied in part 1 FCC Rcd 421 (1986), appeal dismissed sub nom. National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987, modified Policy Statement and Order, 5 FCC Rcd 3525 (1990), on recon., 6 FCC Rcd 3448 (1991), modified 7 FCC Rcd 6564 (1992) (the "Character Policy Statement"). The basis of the current petition is the final adjudication against Scripps Howard of which Four Jacks was not aware until Scripps Howard's July 27 Notice to the Commission.

3. Scripps Howard asserts that Four Jacks is estopped, based on its previous pleadings, from claiming the "triggering event" for purposes of filing a motion to enlarge is the entry of judgment against Scripps Howard. Four Jacks never claimed, however, that the California court's tentative decision was the "triggering event" for a motion to enlarge. While Four Jacks accurately pointed out that the court appeared definitively to have found Scripps Howard's cable subsidiary to have engaged in unlawful anticompetitive conduct, there can be no denying that

the decision initially provided by Scripps Howard was, by its own title, "tentative." The final adjudication was not reported until Scripps Howard's July 27 Notice. That Notice was therefore the event triggering the period for filing a motion to enlarge.<sup>3/</sup>

**PETITION PRESENTS SPECIFIC ALLEGATIONS  
OF FACT TO SUPPORT THE ENLARGEMENT OF ISSUES**

4. The direct nexus which exists between Scripps Howard's recent civil adjudication of misconduct and the day-to-day operation of WMAR-TV in Baltimore is beyond question. Scripps Howard -- the corporation that controls SCT -- is the same corporation with the same officers and directors, that operates WMAR-TV and Scripps Howard's other television stations. Indeed, Scripps Howard had not hesitated to tout its corporate oversight of WMAR-TV's operations when to do so suits its purposes. See, e.g., Threshold Showing of Scripps Howard Broadcast Company's Unusually Good Past Programming Record, filed May 13, 1993. The daily operations in Baltimore will be directly influenced by the attitude of Scripps Howard management toward Commission rules and regulations as well as state and local laws. See RKO General, Inc. (WNAC-TV), 78 FCC 2d 1 (1980) (finding that the misconduct of General Tire, the parent corporation of RKO, adversely affected RKO's fitness to remain a Commission licensee).

5. The customary standard by which to measure misconduct is for the Commission to determine whether that adjudicated

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<sup>3/</sup> In any event, Scripps Howard's pattern of adjudicated misconduct is a matter of the highest public importance which requires consideration of Four Jacks' Petition regardless of its timeliness.

misconduct of a licensee affects the licensee's proclivity to deal with the Commission truthfully and comply with its rules and policies. A licensee's disregard of federal and state regulations impacts its qualification as a Commission licensee. See Applications of the Petroleum V. Nasby Corporation, June 14, 1993. In the case currently before the Commission, the misconduct appears institutional rather than individual, the licensee has not revealed that it has taken any remedial measures, and a pattern of anticompetitive behavior has emerged. It is not relevant to the inquiry whether the parent or a subsidiary was found liable, because parental tolerance of illegal behavior can "infect" any of its subsidiaries. RKO General, 78 FCC 2d at 71.

6. In fact, Four Jacks has identified a disturbing pattern of misconduct and anticompetitive behavior on the part of Scripps Howard, a Commission licensee, and on the part of the wholly owned subsidiaries of Scripps Howard. That behavior is indicative of the future behavior the Commission can expect from Scripps Howard and, therefore, warrants the addition of an issue.

7. In any event, the standard suggested by Scripps Howard, whereby a corporation's illegal activities at one media outlet should not be cognizable unless there is some commonality of participation with the day-to-day operations of the media outlet at issue, would effectively prevent the Commission from taking any action against companies with pervasive corporate misconduct, such as in the RKO case. Although Scripps Howard would undoubtedly benefit from this narrow interpretation, the public interest would not be served.

**FOUR JACKS HAS NOT MISSTATED MATERIAL FACTS**

8. Scripps Howard's only response to the findings of civil anticompetitive liability against it in at least two proceedings is to quibble about the words used to describe its illegal actions. Four Jacks does not contend that Scripps Howard has been found guilty of criminal wrongdoing. Four Jacks accurately contends that Scripps Howard has, for a second time, been adjudicated as having engaged in unlawful anticompetitive misconduct. That is the basis for the petition to enlarge, and no amount of obfuscation can change those facts.

9. It is telling that Scripps Howard has no substantive defense as to why an issue should not be added as to Scripps Howard's qualifications to serve as a Commission licensee. Scripps Howard does not deny that a licensee's past behavior is indicative of its expected performance as a Commission licensee. It does not deny that the Commission is particularly interested in the type of media-related anticompetitive conduct for which Scripps Howard has recently been found liable. It does not deny that a licensee's anticompetitive conduct is an integral factor of the Commission's public interest determination. Instead, Scripps Howard throws up smoke and mirrors in an effort to distract the Commission from the facts at hand: Scripps Howard has yet another final adjudication against it which impacts greatly on its qualifications to be a Commission licensee.

**CONCLUSION**

Accordingly, for the reasons set forth herein, the requested issue should be added against Scripps Howard Broadcasting Company.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

By: Julie Arthur Garcia  
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Dated: September 6, 1994

**CERTIFICATE OF SERVICE**

I, Rhea L. Lytle, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing "**PETITION TO ENLARGE THE ISSUES**" were sent this 6th day of September, 1994, by first class mail, postage prepaid, to the following:

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          Federal Communications Commission  
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